(1994) 09 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 3655 of 1991

Goindwal Steels Ltd. APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:

Punjab Industrial Incentives Code under the Industrial Policy Statement Rules, 1978 — Rule 2.14, 5.1

Citation : (1995) 109 PLR 555

Hon'ble Judges : Harphul Singh Brar, J

Bench : Single Bench

Advocate : Vinod Sharma, for the Appellant; G.S. Nihalsinghwala, AAG and A.S. Sidhu, Dy. Director (Inc.II) in person, for the Respondent

Final Decision : Dismissed

Judgement

Harphul Singh Brar, J.—This judgment will dispose of Civil Writ Petition No. 3655 of 1991 and Civil Writ Petition No. 5098 of 1994, as common questions of fact and law are involved in both these writ petitions. For facility of reference, facts have been taken from Civil Writ Petition No. 3655 of 1991.

2. In this Writ Petition under Articles 226/227 of the Constitution of India, the petitioner-Company Messrs Goindwal Steels Ltd. seeks a writ of Mandamus directing the respondents to release 25 per cent subsidy on power tariff as admissible to the petitioner-Company under the Punjab Industrial Incentives Code under the Industrial Policy Statement, 1978.

3. Briefly stated, the facts are that the Government of Punjab issued the Industrial Policy Statement, 1978 for providing grant of various incentives for the new Industries to be set up in the State of Punjab. To implement the scheme of incentives set out in the aforesaid Industrial Policy Statement, the Governor of Punjab framed the rules, called the "Punjab Industrial Incentives Code under the Industrial Policy Statement, 1978" (hereinafter referred to as the Rules). The relevant provisions of the Rules for decision of the cases are reproduced as

under:

"2.14. ''Power-based industry'' means an industry declared as such by the State Government.

5. Subsidy on Electrical Tariff for Power-based Industries.

5.1. Subsidy equal to 25% of the power tariff as may be fixed by the State Electricity Board shall be "admissible to units in respect of power-based industries for a period of 5 years from the date of power connection."

4. The petitioner-Company filed an application dated July 11/12, 1989 for grant of 25 per cent of subsidy on power bills of the tariff in Form ''C'' as prescribed under the Punjab Industrial Incentives Code under the Industrial Policy Statement, 1978 and enclosed herewith the photocopies of all the electricity bills charged, revised, paid and payable or demanded in due course for the period ending March 31, 1989. The application for grant of subsidy, as stated above, is annexed as Annexure PI with the petition.

5. A writ of demand was also issued by the petitioner-Company through their counsel on September 12,1990. As the respondents failed to release the subsidy, the petitioner-Company filed Civil Writ Petition No. 14174 of 1990 (Messrs Goindwal Steels Ltd. v. State of Punjab etc.) which was disposed of by this Court on November 7, 1990 with a direction to the respondents to dispose of the claim of the petitioner by passing a speaking order within three months. In obedience to the direction of this Court, an order was passed by Shri H.S. Rakhra, Director of Industries, Punjab, on February 14, 1991 rejecting the claim of the petitioner on the ground that the claim of the petitioner-Company for grant of 25 per cent subsidy on the Power Tariff could not be accepted as it did not stand declared as ''power based industry'' by the State Government within the meaning of Rule 2.14 of the Rules. The order of the Director of Industries, Punjab, dated February 14, 1991 is annexed as Annexure P7 with the petition.

6. It is in these circumstances that the petitioner-Company seeks quashment of order, dated February 14, 1991, Annexure P7, being illegal arbitrary and unconstitutional, mainly on the following grounds:

i) Certificates have been issued by the Punjab State Electricity Board to the effect that Arc and Induction Furnaces are Power Intensive units and, therefore, the petitioner-Company is entitled to 25 per cent subsidy on power bills at relevant tariff;

ii) When the Company has set up a Steel Arc Furnace at Goindwal Sahib on the promise of certain industrial benefits including 25 per cent subsidy on electric tariff, the same cannot be denied to the petitioner-Company after they have acted upon the same;

iii) The respondents have failed to exercise the statutory duty cast on them in releasing 25 per cent subsidy on electric tariff, in spite of an application having been made by the petitioner-Company.

iv) The action of the respondents is violative of Articles 14 and 16 of the Constitution of India inasmuch as they have been following pick and choose method in granting the subsidy benefits;

v) The action of the respondents in denying the subsidy on power bills at relevant tariff is violative of principles of promissory estoppel in not fulfilling their obligations as envisaged under the Industrial Code; and

vi) The action of the respondents is arbitrary and violative of Article 14 of the Constitution of India, as it was their duty to make a declaration under Rule 2.14 to the effect that the industry set up by the petitioner is a ''Power based industry''.

7. Reply has been filed on behalf of the respondents.

8. It has been mentioned in the reply that Power based Industry means an Industry declared as such by the State Government as mentioned under Rule 2.14 of the said statutory Rules, but no industry has been declared as Power based Industry by the State Government, that is, Secretary to Government, Punjab, Department of Industries with in the meaning of Rule 2.14 of the statutory Rules.

9. It is then stated in the reply that the petitioner-Company was not entitled to avail subsidy on electricity tariff meant for Power based Industries under Rule 5 of the Rules, as the Company had not been declared as a Power based Industry by the State, Government within the meaning of Rule 2.14 of the Rules. The averment made in the petition wherein it is stated that the petitioner-Company is entitled for 25 per cent subsidy has been denied in the written statement, mainly on the ground that the petitioner is not covered under the definition of Power based Industry as mentioned in Rules 2.14 of the Rules.

10. The learned counsel for the petitioner has argued on the basis of the grounds mentioned in para No. 6 above that the petitioner-Company is entitled to 25 per cent subsidy on power bills. He submits that the petitioner had established his industry on the basis of assurance made in the Policy, particularly under Rule 5.1 thereof that subsidy equal to 25% of the power tariff as may be fixed by the State Electricity Board shall be admissible to units in respect of power-based industries for a period of 5 years from the date of power connection. The respondents, according to the learned counsel, could not deny this benefit to the petitioner-Company after he has established his industry.

11. The learned counsel for the petitioner further states that the respondents are bound on the principle of promissory estoppel to grant the benefits to the petitioner once an industry has been established by the petitioner. He wants the respondents to declare the petitioner''s industry as Power based industry particularly on the basis of certificates issued by the Punjab State Electricity Board to the effect that Arc and Induction Furnace are Power Intensive units and

the Company has set up steel Arc Furnace at Goindwal Sahib on the promise of certain industrial benefits including 25 per cent subsidy on electric tariff. He has also cited the following authorities:

1) The Union of India and Ors. v. M/s Anglo Afghan Agencies etc. AIR 1968 SC 718

2) The Praga Tools Corporation Vs. Shri C.A. Imanual and Others, ;

3) Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, ;

4) Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ;

5) Oriental Fire and General Insurance Co. Ltd. Vs. Ramanath Mohanty and Others,

6) Indian Metals and Ferro Alloys Ltd. and Another Vs. State of Orissa and Others, ; and

7) Surendra Prasad Misra Vs. Oil and Natural Gas Commission, .

to support his plea that the respondents are bound to release 25 per cent subsidy to the petitioner-Company as provided under Rule 5.1 of the Rules.

12. I cannot persuade myself to hold that the petitioner-Company established its industrial units on the basis of the representations made in the Policy on the bases of which 1978 Rules, referred to above, were framed. It has been specifically defined under Rule 2.14 of the Rules that ''Power based industry'' means an industry declared as such by the State Government. Rules 5 and 5.1 of the Policy specifically mention as under:

"5. Subsidy on Electricity Tariff for Power-based Industries.

5.1 Subsidy equal to 25% of the power tarriff as ''may be fixed by the Electricity Board shall be admissible to units in respect of power-based industries for a period of 5 years from the date of power connection."

Percent of the power tariff as may be fixed by the State Electricity Board shall be admissible to units in respect of power-based industry only, and Power-based industry has been clearly defined under Rule 2.14 of the Rules. There is no ambiguity, misrepresentation or indication of any type in the Rules which entitles any other type of industry other than the Power-based industry defined under Rule 2.14 of the Rules which would entitle to any benefit under Rules 5.1. It was with eyes open that the petitioner started his industry. If the petitioner-Company wanted to avail of the incentives provided in the Rules as Power-based industry, then it was incumbent upon the petitioner first to get the industry declared as Power-based industry under Rule 2.14 of the Rules ibid. Thus, there was no promise made to the Company by the respondents before its set up which the respondents were obliged to fulfill. When no promise is made, then question of its fulfillment does not arise. The petitioner-Company cannot infer from any other sources to consider its Company as a Power based company except the one declared under Rule 2.14. It has been specifically mentioned in the written statement filed by the respondent that no industry was declared as Power-based industry by the Government under Rule 2.14 of the 1978 Rules. Thus, the authorities cited by the learned counsel for the petitioner are of no avail to him.

14. The respondents have made it clear to the petitioner and all others that grant of 25% subsidy on power tariff is admissible only to the Power based industries so declared under the Rules. The submission of the learned counsel for the petitioner that it was the duty of the respondents to declare the unit of the petitioner as Power-based industry is, thus, untenable. There is, thus, no violation of Articles 14 and 16 of the Constitution of India. Moreover, there was no pick and choose method in granting the subsidy as alleged by the learned counsel, as it has been stated above that no industry was declared as Power-based industry in the State under the 1978 Rules, and no one was given any subsidy under the Rules.

15. In the end, the learned counsel for the petitioner has relied upon an affidavit filed by him wherein he has stated that Messrs Ludhiana Steels Pvt. Ltd. Ludhiana were granted subsidy on electricity tariff by treating the same to be Power based industry. However, in reply filed by the respondents this assertion, has been specifically rebutted. It has been stated in Para 4 of the affidavit of the respondents that Messrs Ludhiana Steels Pvt. Ltd., C 44-45 Focal Point, Dhandari Kalan, Ludhiana were sanctioned 25% subsidy on electricity tariff vide order issued by D.I. Punjab under Ends. No. IMI/67/Tariff/Ludhiana-3/6319-B, dated June 18, 1964 under the Rules for the grant of Incentives under Industrial Policy 1973 and not under 1978 Policy. The case of the petitioner relates to the Industrial Policy 1978 and, therefore, has no relevance with the case of Messrs Ludhiana Steels Pvt. Ltd. Dhandari Kalan, Ludhiana. In the same affidavit, it has been reiterated that Power-based industry means an industry declared as such by the State Government as mentioned under Rule 2.14 of the Rules for the grant of Incentives under the Industrial Policy of 1978. No industry has been declared as Power-based industry by the State Government, that is, Secretary to Government Punjab, Department of Industries within the meaning of Rule 2.14 of the said Rules.

16. It is then argued by the learned counsel for the respondents that there is no such provision like Rule 2.14 of the Rules in the 1973 Scheme under which industry had to be declared as a Power-based industry by the State Government. Thus, in these circumstances when it has been categorically mentioned in the 1978 Rules that subsidy on the power tariff shall be admissible to units in respect of Power-based industry only and Power-based industry is defined under Rule 2.14 of the Rules as an industry declared as such by the State Government, then the petitioner-Company was not entitled under Rules for 25 per cent subsidy on power bills as claimed by it. Mere submission of an application by the petitioner-Company to claim 25 per cent subsidy under Rule 5.1 of the Rules without

getting it declared as a Power-based industry under Rules 2.14 of the Rules, does not entitle the petitioner to get the subsidy which could be admissible only to Power-based industry so declared under Rule 2.14 of the Rules. There is no question of backing out of any promise when it was not so made with the Company.

17. In these circumstances, I do not find any force in this petition which is dismissed, but without any order as to costs.

